UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ZEXTRAS S.R.L.,

Plaintiff,

vs.

SYNACOR, INC.,

Defendant.

Case No. 1:23-cv-07937 (DEH)

[PROPOSED] ADDENDUM TO PROTECTIVE ORDER

WHEREAS Plaintiff Zextras S.r.l. and Defendant Synacor, Inc. (collectively, the "Parties," and individually, a "Party") hereby stipulate and agree that the following additional terms governing virtual inspection of Highly Confidential Source Code, shall be added to the Protective Order (ECF No. 27);

IT IS HEREBY ORDERED that the following provisions shall be incorporated into the Protective Order and any person subject to the Protective Order—including without limitation the parties to this action, their representatives, agents, experts and consultants, all third parties providing discovery in this action, and all other interested persons with actual or constructive notice of this Protective Order—shall adhere to the following terms:

1.   "Highly Confidential Source Code" information is defined as information comprising sensitive computer code, scripts, source code, object code, microcode, software application code, programming code or other machine language instructions, and associated comments and revision histories, formulas, engineering specifications, or schematics that disclose such computer code, scripts, source code, object code, microcode, software application code, programming code, scripts, source code, object code, microcode, software application code, programming code, or other machine language instructions, the disclosure of which would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.   A producing party may designate source code as "Highly Confidential Source Code" if it comprises or includes confidential, proprietary or trade secret source code.

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3.   Material designated "Highly Confidential Source Code" shall be afforded and subject to the protections provided herein and shall also be subject to all protections of information designated "Highly Confidential – Attorney's Eyes Only" under the Protective Order.

4.   Highly Confidential Source Code requested in discovery shall be made available for inspection, in a format allowing it to be reasonably reviewed and searched.

5.   Inspection of the Highly Confidential Source Code shall occur via TeamViewer or Citrix during regular business hours (9:00 a.m. to 6:00 p.m. EDT, Monday through Friday) on mutually agreeable dates and times. The total allotted time for inspection shall not exceed 50 hours. To the extent additional time is required, the reviewing party may request a reasonable amount of additional time.

6.   At least two business days in advance of each Highly Confidential Source Code review, the reviewing party must request in writing to counsel for the producing party date(s) and anticipated start time(s) and end time(s) for the Highly Confidential Source Code review. The parties are to cooperate in good faith to schedule the review.

7.   At least two (2) business days in advance of the Highly Confidential Source Code review, the reviewing party shall disclose to the producing party the names of outside litigation counsel who will be performing the inspection, and, for the third-party expert, the reviewing party will represent that such third-party expert has executed the Addendum annexed hereto and that the third-party expert has no prior or current relationship with the reviewing party (other than serving as an expert in connection with this litigation), its affiliates, or employees. The individuals disclosed under this paragraph shall execute the Addendum hereto and be the only individuals to inspect the Highly Confidential Source Code.

8.   The Highly Confidential Source Code shall be loaded onto a computer maintained by the producing party (the "Source Code Host Machine"). The Highly Confidential Source Code shall be loaded in native format and as used in the producing party's production environment. With respect to review by Synacor as the reviewing party, the Source Code Host Machine shall also include: (1) a copy of Synacor's source code for Zimbra open source edition, which Synacor shall provide; (2) an industry-standard Integrated Development Environment (IDE), such as "IntelliJ"; (3) a file decompressor; and (4) the Simian comparison tool version 4.0.0, which is available for public download at https://simian.quandarypeak.com.

9.   Within seven (7) business days of the parties' execution of this order, the producing party will provide two (2) computers to be used to inspect the code (the "Remote Review Computers"). Only the Remote Review Computers shall be used to connect to the Source Code Host Machine. Only one remote session will be allowed at a time. At the conclusion of discovery in the litigation, the reviewing party shall return the Remote Review Computers to the producing party.

10.   At each scheduled date and time for the Highly Confidential Source Code review, the producing party's counsel shall provide the reviewing party's outside litigation counsel or expert a passcode to allow remote access to the Source Code Host Machine via the remote desktop. The passcode will be unique to each remote desktop session. At the end of the review, the reviewer shall log out of the remote desktop. Immediately upon completion of the review, the reviewing party's outside litigation counsel shall inform the producing party's counsel that the review has ended. Reviewers are not permitted to access the Source Code Host Machine outside of agreed-upon times.

11.   The reviewing party shall not copy, remove, screen capture or otherwise transfer any portion of the Highly Confidential Source Code. The Remote Review Computer will have no peripheral device connectors and such connectors will be disabled.   The use or possession of any electronic input/output device (*e.g.*, USB memory stick, mobile phone, tablet, personal digital assistants (PDAs), smartphones, Dictaphones, voice recorders, external or portable telephone jack, camera or any camera-enabled device, CD, floppy disk, portable hard drive, laptop, or any device that can access the Internet or any other network or external system, etc.) is prohibited while inspecting Highly Confidential Source Code via the Remote Review Computer.

12.   The producing party may take appropriate measures to monitor for and prevent the use of such electronic input/output devices in conjunction with the Remote Review Computer and to monitor for and prevent copying, duplicating, pasting, printing or any other duplication of the Highly Confidential Source Code.

13.   The producing party may log all connections to the Source Code Host Machine.

14.   The producing party shall be entitled to observe each remote session to ensure that there is no unauthorized recording, copying, or transmission of the source code.

15.   The producing party may also terminate the secure connection to the Source Code Host Machine after 30 minutes of inactivity on the Remote Review Computer connected to the Source Code Host Machine.

16.   The reviewing party may request paper copies of portions of Highly Confidential Source Code that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers, or for deposition or trial, and such copies shall be used only for those purposes. The producing party shall provide all such source code in paper form including bates numbers and the label "HIGHLY CONFIDENTIAL - SOURCE CODE." Any dispute over the

request for paper copies shall be resolved following the procedure set forth in paragraph 10 of the Protective Order. This paragraph shall be the exclusive method for procuring copies of the Highly Confidential Source Code.

17.   The reviewing party shall maintain all paper copies of any printed portions of the Highly Confidential Source Code in a secured, locked area. The reviewing party shall only make additional paper or electronic copies if such additional copies are (1) necessary to prepare court filings, pleadings, or other papers (including a testifying expert's expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case. Counsel for the reviewing party shall track all electronic and paper copies so that they may be destroyed in accordance with Paragraph 17 of the Protective Order following the final disposition of the litigation. Any paper or electronic copies used during a deposition must not be given to or left with a court reporter or any other unauthorized individual.

18.   Outside litigation counsel for the reviewing party shall maintain a source code log containing the following information the identity of each person granted access to the Highly Confidential Source Code or portions thereof, regardless of form. Outside litigation counsel for the reviewing party shall produce to the producing party a copy of the source code log upon a request by the producing party supported by good cause.

19.   The parties reserve their rights to seek judicial modification of this protocol for good cause.

Dated: 4/4/2024   Dated: 4/4/2024

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SO ORDERED

Dated: <u>April 5, 2024</u>
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                  Dale E. Ho
        United States District Judge